

1984 WL 250028 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 21, 1984

*1 Honorable Philip Lader
President
Winthrop College
Rock Hill, SC 29733

Dear President Lader:

You have requested the opinion of this Office concerning a matter involving Winthrop's student newspaper, The Johnsonian (paper). This matter originated when the student editor of the paper refused to publish a paid advertisement submitted for publication. Our advice herein addresses only the procedural questions raised in your letter and we, of course, need not address the content of the disputed ad in this response since the content of the ad is not relevant to the inquiry.

We advise at the outset that in issuing its opinion, this Office does not attempt to investigate or determine facts. We must rely on the facts provided by Winthrop.

According to the information presented to this Office, the faculty advisor to the paper counseled the student editor to print the advertisement. Apparently, because of this disagreement, the faculty advisor requested a meeting with the faculty-student Board of Student Publications (Board). The Board met and concluded, by way of formal motion, that the student editor 'acted within his authority'; however, the Board found as well that the ad was not in violation of any editorial policies and 'should be published.' [Emphasis added]. We do not have information concerning the procedure followed by the Board at its meeting. Thereafter, the student editor notified you that he would like to file an 'appeal' from that decision if appellate remedies were available within the college. You first inquire whether there is an administrative 'appeal' remedy available to the student editor.

We first note that the motion passed by the Board appears to have been merely advisory, rather than directory as to the publication of the ad, thus, an appeal in the traditional or judicial sense most probably does not lie. It has been frequently recognized that: . . . administrative orders are not reviewable unless and until they impose an obligation, deny a right or fix some legal relationship as a consummation of the administrative process. [Chicago and S. Airlines v. Waterman S.S. Corp.](#), 333 U.S. 103, 92 L.Ed. 568, 577, 68 S.Ct. 431 (1948). See 1 Am.Jur.2d, Administrative Law, §§ 571, 585.

Here, as noted, the Board found that the disputed ad 'should' be published, and although the word 'should' is subject to varying interpretations, the context here indicates no directive or order compelling the editor to publish the ad. See Black's Law Dictionary (5th Ed.); Words and Phrases, Vol. 39, 'Should'. Consistent with its intent, the Board took no formal disciplinary action against the editor, nor did it threaten any. Accordingly, the ad was never published during the student editor's term in that office. Moreover, the Board specifically found that the editor acted within his authority in refusing to publish the ad. We note that the editor continued to serve for the remainder of his term and has now graduated from Winthrop. These facts support a conclusion that the Board's decision was merely advisory. As such, even assuming the presence of a formal administrative appeal process, we doubt that this advisory decision is appealable to the President or the Board as a matter of right at the request of the student editor.

*2 We next address, generally, the extent of discretionary review authority possessed by the President and The Board of Trustees (Trustees) with regard to decisions of the Board. There is an absence of express authority prescribing an appeal or review procedure from a Board decision. Neither the guidelines and bylaws of the college, nor any written Board policy provide

such authority or procedure. Nonetheless, the Board of Trustees has virtually plenary power over the administration of the college, and this authority, at least for the most part, has been delegated to the President. See §§ 59-125-70-59-125-90, [Code of Laws of South Carolina \(1976\)](#); Bylaws, Art. I, § P and Art. II, § A. In addition, there is nothing expressed within any of the guidelines and policies suggesting that the Board decisions are final as to administrative review. Because Board decisions are not expressly made final, and because the President and the Trustees possess a broad scope of authority, the President and the Trustees most probably retain the authority to review decisions of the Board as part of their general administrative authority over the college. 1 Am.Jur.2d, [Administrative Law](#), § 25 and §§ 221, [et seq.](#) ¹; however, again nothing in the bylaws, guidelines and policies suggests that administrative review of the Board decision may be demanded as a matter of right. We caution here, that although we believe that the President and the Trustees maintain the general authority within their discretion to review decisions of the Board, the scope of their authority may be severely circumscribed by constitutional constraints. For example, with regard to editorial decisions made by a student editor as to the content of a student newspaper, the first amendment right of freedom of the press restricts censorship by a college or university. See e.g., [Mississippi Gay Alliance v. Goudelock](#), 536 F.2d 1073 (5th Cir. 1976) [cert. den.](#) 430 U.S. 952; [Joyner v. Whiting](#), 477 F.2d 456 (4th Cir. 1973); [Antonelli v. Hammond](#), 308 F.Supp. 1329 (1970); [Milliner v. Turner](#), 436 So.2d 130 (La.App. 1983); See also Publications Board Organization and Duties, II(3) and (4) and Policy Guidelines, I(D)(2) and II(A)(2) and (3). Because of the uncertainty regarding administrative review of the Board's decisions, we recommend clarification of the written policies concerning the relationship among the Trustees, the President, the Board and the student editor.

You have additionally inquired as to the law governing disposition of any administrative appeal or review of the Board's decision. The remedy of appeal to the courts does not lie in this instance, since there is no statutory provision authorizing such appeals and the remedy of appeal was unknown at common law. 4 C.J.S., [Appeal and Error](#), §§ 518, 520. However, in the absence of an appellate statute, redress to the courts from a final agency decision may be through the avenue of the common law writ of certiorari. [Wagner v. Ezell](#), 249 S.C. 421, 154 S.E.2d 731 (1967); [Feldman v. S.C. Tax Commission](#), 203 S.C. 49, 26 S.E.2d 22 (1943).

*3 In conclusion, we find that the President and Trustees have the general authority to review decisions of the Board of Student Publications subject to constitutional and other legal restraints, but we recommend that careful consideration be given to clarifying policy concerning the relationship among the Trustees, the President, the Board and the editor.

If we may assist you further concerning your review of your publications policy, please let us know.

Yours very truly,

Edwin E. Evans
Senior Assistant Attorney General

Footnotes

- ¹ Because of the authority delegated to him by the Trustees, the President would appear to have the initial authority to review a Board decision subject to review of his decision by the Trustees. See Bylaws, Art. I, § P and Art. II § A.

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